

# HIV and Social Policy in Sub-Saharan Africa: Future Goals for Protecting the Children in Sub-Sahara Africa

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## Abstract

The onerous task of protecting orphans in Africa requires a multifarious effort aimed not only at infusion of public, private or international funding into the care and treatment of HIV/AIDS but also the building of economic and legal systems that integrates social and cultural representation and identity of the people such as those that energize the primary base and involve these vulnerable victims of HIV/AIDS. Goals and objectives of governments and institutions working in this field of health should be a collaborative effort towards an effective coordination of work strategically designed for children in partnership with mental health, social, medical and legal personnel. It is my opinion that this will promote easy access to all available resources especially in countries such as Nigeria, Uganda and South Africa where HIV/AIDS is very endemic. In order to prevent abuse and improve access to health care, ethical and legal issues, much attention should be paid to the underlying social and economic problems that contributed to the spread of the disease. Orphans have been greatly affected by the high level of poverty, infectious diseases reaching epidemic levels, lack of education and inadequate health, legal, social and economic infrastructures.

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*Index terms—*

## 1 Introduction

The onerous task of protecting orphans in Africa requires a multifarious effort aimed not only at infusion of public, private or international funding into the care and treatment of HIV/AIDS but also the building of economic and legal systems that integrates social and cultural representation and identity of the people such as those that energize the primary base and involve these vulnerable victims of HIV/AIDS. Goals and objectives of governments and institutions working in this field of health should be a collaborative effort towards an effective coordination of work strategically designed for children in partnership with mental health, social, medical and legal personnel. It is my opinion that this will promote easy access to all available resources especially in countries such as Nigeria, Uganda and South Africa where HIV/AIDS is very endemic. In order to prevent abuse and improve access to health care, ethical and legal issues, much attention should be paid to the underlying social and economic problems that contributed to the spread of the disease. Orphans have been greatly affected by the high level of poverty, infectious diseases reaching epidemic levels, lack of education and inadequate health, legal, social and economic infrastructures.

Aside from the various social and economic infrastructures, law and legal reforms will actively play a major role in regulating behaviors, improving access and treatment, providing for present and future personal and proprietary interests of the victim and ultimately help in developing the full potentials of the general populations and increase economic growth and stability of the countries. These are issues that governments have control over and the effective intervention of the government not only on the policy level, but on implementation and enforcement aspects will ensure public health and safety. As part of the larger strategy that seeks to protect

# 1 INTRODUCTION

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43 children's psychosocial health, the Author : LL.B (Hons.), BL, LL.M (Child & Family Law), SJD (Health Law &  
44 Policy), CinMgt., Lecturer in Law, Department of Public Law, Ekiti State University, Ado-Ekiti, Nigeria. e-mail:  
45 folukedada@gmail.com legal system of the three countries in focus must provide the framework for a workable  
46 HIV/AIDS policy through the development of laws and the implementation of policy issues and instruments that  
47 regulate human behavior, develop environmentally adaptable social norms and views that are in sync with new  
48 developments in health care designed to manage disease outbreak and health care service and delivery across the  
49 various communities of the sub Saharan region of Africa. Additionally, "some of the social and institutional issues  
50 that must be addressed for national poverty reduction are also of vital importance for an effective and lasting  
51 response to HIV/AIDS." ?? Most of the Public health, social policy and system development and policy delivery  
52 framework within government establishments must include a multidisciplinary approach for the development of  
53 national HIV/AIDS framework. These take the form of the development of social and public health policies such  
54 as "surveillance, screening and testing for HIV/AIDS; prevention of mother-to-child transmission, which involves  
55 issues of testing of expectant mothers and newborns; confidentiality/disclosure of HIV information; partner  
56 notification and contact tracing; isolation and quarantine; blood, tissue and organ supply; universal infection  
57 control precautions; post-exposure prophylaxis

58 The future goals for sub-Saharan African countries therefore will therefore be better enumerated by looking at  
59 the different areas of possible future development including but not limited to policy and system development,  
60 systemic management of social and legal infrastructures and framework, adaptation of existing and new systems  
61 to existing cultural and social systems, implementation of key systems for a direct community involvement and  
62 benefit and the introduction of solid, evidence based monitoring and evaluation systems in line with recent  
63 development in technology and international monitoring systems that may bolster the achievement of the  
64 millennium goals and national economic and health development of the citizens. rules; and access to condoms". ??  
65 The practicability of these policies within the African system will depend largely on legal enforcement mechanisms  
66 that are in place on which the sustainability of applicable policies and systems will depend. For example, the  
67 recent review of the HIV policy environment in Uganda, the need to continually develop a strong and supportive  
68 legal and policy environment was identified as key to the scale up of the fight against HIV/AIDS. ?? According to  
69 this review however, "the dynamics and magnitude of the social, psycho-social and economic impact of HIV/AIDS  
70 call for formulation and articulation of specific and appropriate policy, legal and administrative instruments for  
71 containing the epidemic and protecting the rights of those at risk of infection, the infected and affected, and  
72 ensuring that the non-infected remain uninfected. The existing policy guidelines needed to be reviewed and  
73 updated for adaptation to make them consistent and relevant to the current HIV/AIDS situation coupled with  
74 current developments in the country and international level." 4 (i) to scale-up biomedical interventions to achieve  
75 universal access targets,

76 The Ugandan National Strategic Plan on HIV/AIDS adopted a combination theoretical approach which is  
77 fourfold. These are:

78 (ii) uphold behavioral interventions, (iii) address socio-cultural and economic drivers of the epidemic and (iv)  
79 re-invigorate political leadership at all levels to enlist their commitment to HIV prevention. ?? The introduction  
80 of legally backed and directly relevant public health policies with strong emphasis on mental health care for  
81 children will create an avenue for the enforcement of the legal rights of the children especially within the mental  
82 health field that has been neglected by many countries within the sub-Saharan region of Africa. Social factors  
83 affecting the effective control and management of the disease include the burdens imposed by abject poverty  
84 despite the huge influx of funds and resources from international, regional and local organizations, the burden  
85 of disease such as TB, Malaria, and Measles exacerbated by the poor access to medical services caused mainly  
86 by poverty, lack of information, education and poor transportation and communication systems. The spate of  
87 progress in many parts of sub-Saharan Africa has been slowed down by localized infrastructural and systems  
88 failure occasioned mostly by government failure to understand the importance of consistent and persistent push  
89 to ensure that the effect of the disease is minimized on those that are already infected and the spread curtailed  
90 through adequate funding and the establishment of social systems designed to guarantee local access to primary  
91 and community healthcare services that incorporate HIV/AIDS program for pregnant women and children and  
92 ensure community educational services that serve the purpose of constant community awareness and that which  
93 encourages community participation at all levels. Recently, the Global Fund to Fight AIDS, Tuberculosis and  
94 Malaria recently announced a shortage of around \$4 billion that is needed to continue funding essential HIV, TB  
95 and malaria services in 2010. The coalition believes there is a \$10.7 billion funding gap for regional implementation  
96 of the Global Plan to Stop TB 7 with international donors and the already hard pressed African governments  
97 unable to meet with funding/financial obligations needed to actively curtail the spread of HIV/AIDS. 8 This is  
98 in contravention of the pledge by African leaders at the Abuja, Nigeria meeting in 2001 9 to set aside 15 percent  
99 of their national expenditure towards health. However, the cost of healthcare in most African countries is not  
100 commensurate with the average income and as such is reflected in the high disparity in the standard of living  
101 in Africa and in other developed parts of the world. In South Africa for instance, the average hospital stay for  
102 people with HIV is four times longer than for those with other illnesses. This will obviously increase the pressure  
103 on hospitals and healthcare services that are already over-burdened. ??0 Due to pressure from international  
104 organizations such as the WHO, Governments of countries in sub-Saharan Africa have been undertaking efforts  
105 aimed at combating the spread of HIV/AIDS in recent years. However, more has to be done to develop social

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106 systems and develop infrastructures that will enhance local policies and promote the achievement of millennium  
107 development goals within the stipulated period. Concerted efforts at reducing poverty in sub-Saharan Africa will  
108 promote the health of the people and increase the earning potentials and spending power that will ultimately help  
109 in developing the economies of the countries within the region and the global economy in general. At this point  
110 it is worthy to note the efforts of governments of the USA and the Republic of Korea to respond positively to the  
111 call by UNAIDS for the removal of visa/immigration and travel restrictions on people with HIV/AIDS effective  
112 January 1, 2010. Efforts such as this will promote the human rights of individuals especially the rights to freedom  
113 of movement and association and encourage world trade development and advancement in world economy and  
114 technological development. Also, the trend of criminalizing HIV/AIDS by many countries of the world has been  
115 criticized as working to unfairly punish women who often do not make sexual decisions within many cultures in  
116 Africa. These women ultimately pass the disease to the unborn children who then become the unwilling victim  
117 of societal condemnation and abuse. These children should be protected and afforded the necessary training and  
118 upbringing that will ensure that HIV/AIDS is controlled especially amongst the youth.

119 Over the years, social development outcomes have been uneven across and within Sub-Sahara African countries  
120 resulting in "the escalation in poverty, anemic growth rates, persistence in the structural weaknesses of these  
121 economies, and reversal in social development indicators, raise major challenges for them." 11 According to the  
122 United Nations Research Institute for Social Development, there is a great necessity for tackling social challenges  
123 stemming from reduced capacities despite years of social reform. As a result, "this social deterioration, which has  
124 taken place over the last two decades, shows the urgency of social policy in the region." 12 11 See UNRISD Social  
125 and Policy Development (2000-2005) 'Social Policy in Late-Industrializers: Sub-Saharan Africa and the Challenge  
126 of Social Policy' 12 "id" This will also be in line with the nine priority framework developed by UNAIDS to reduce  
127 sexual transmission of HIV, mothers from dying and babies from becoming infected with HIV, ensure that people  
128 living with HIV receive treatment, prevent people living with HIV from dying of tuberculosis, protect drug users  
129 from becoming infected with HIV, remove punitive laws, policies, practices, stigma and discrimination that block  
130 effective responses to AIDS, stop violence against women and girls, empower young people to protect themselves  
131 from HIV and enhance social protection for people affected by HIV. ??3 II.

## 132 **2 Provision Of Legal Defense For Children And Orphans**

133 The South African Constitution however, affords its citizens some due process procedural and substantive rights  
134 in various sections of the constitution and guarantees every citizen the right to freedom including the right  
135 to bodily and psychological integrity and privacy rights, including the right to keep personal communications  
136 private. There is also a broad grant of equal rights and protection to all persons. Unlike the United States  
137 where equal protection extends only to state actors performing public functions, the South African Constitution  
138 guarantees privacy rights that extends to both private and public actors. The Constitutional Court stated that  
139 "This question, left unanswered in the interim constitution, was cleared up by Section 8 of the final Constitution:  
140 the Bill of Rights doesn't only apply vertically (from the state downwards, to its citizens) -it also applies, where  
141 applicable, horizontally (between one citizen or private body and another)." The Constitutional Court of South  
142 Africa has declared that Section 28 of the Bill of Rights, entitled "Children" is the most important legislation  
143 giving constitutional rights to children in South Africa. The section provides that; a) Every child has the right to  
144 1. a name and a nationality from birth; 2. family care or parental care, or to appropriate alternative care when  
145 removed from the family environment; 3. basic nutrition, shelter, basic health care services and social services; 4.  
146 be protected from maltreatment, neglect, abuse or degradation; 5. be protected from exploitative labor practices  
147 6. not be required or permitted to perform work or provide services (thata) are inappropriate for a person of that  
148 child's age; or b) place at risk the child's well-being, education, physical or mental health or spiritual, moral or  
149 social development; 7. not be detained except as a measure of last resort, in which case, in addition to the rights  
150 a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of  
151 time, and has the right to be -a) kept separately from detained persons over the age of 18 years; and b) is treated  
152 in a manner, and kept in conditions, that take account of the child's age; 8. have a legal practitioner assigned to  
153 the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would  
154 otherwise result; and a) not be used directly in armed conflict, and to be protected in times of armed conflict.  
155 9. A child's best interests are of paramount importance in every matter concerning the child. 10. In this section  
156 'child' means a person under the age of 18 years. Despite the broad language used in the Bill of Rights, courts  
157 in South Africa are enjoined to keep the constitution in mind when interpreting the provisions of the Bill. S. 39  
158 (1) (a) of the Bill stipulates also that, "When interpreting the Bill of Rights, a court, tribunal or forum must  
159 promote the values that underlie an open and democratic society based on human dignity, equality and freedom."  
160 This applies generally to children especially those infected or affected by HIV/AIDS who are generally unable to  
161 protect themselves or unable to access most of their vital daily needs within the society. The Court in Hoffman  
162 v. South African Airways (supra), recognized this need and affirmed that individuals who are not able to defend  
163 themselves have the right to be represented in legal suits by associations and groups and those acting in the  
164 public interest to "approach a competent court, alleging that a right in the Bill of Rights has been infringed or  
165 threatened" with the court being authorized to issue appropriate relief "including a "declaration of rights". The  
166 Court has also affirmed in the case of Minister of Health and others v Treatment Action Campaign and others  
167 (supra) where the Treatment Action Campaign (TAC) and two other parties challenged the government's policy

## 2 PROVISION OF LEGAL DEFENSE FOR CHILDREN AND ORPHANS

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168 on the prevention of mother-to-child transmission of HIV which permitted the use of Nevirapine at a limited  
169 number of pilot sites only affecting a significant group of HIV-positive mothers and children who did not have  
170 access to the research sites and were effectively denied access to a potentially lifesaving medical intervention  
171 provided free of charge to the South African government for a period of two years by its manufacturers. The  
172 Court addressed the question whether the applicants had shown that the measures adopted by the government  
173 fell short of obligations under the Constitution. The Court said provision of a single dose of nevirapine was  
174 essential as far as children were concerned.

175 The Court in *Khosa v. Minister of Social Development* (supra) also affirmed that, "the right of access to social  
176 security, including social assistance for those unable to support themselves and their dependants is entrenched  
177 because as a society, we value human beings and want to ensure that people are afforded their basic needs". The  
178 court stated further that "a society must seek to ensure that the basic necessities of life are accessible to all  
179 if it is to be a society in which human dignity, freedom and equality are foundational" Other legislations that  
180 provide specific protection for children in South Africa include: These legislations take effect to protect the best  
181 interests of children in all foreseeable manners within the ambit of the law. The interrelationship between the  
182 rights affording protection to children can be seen in the multilayered legislations enacted both at the national  
183 and international levels harnessing local and international resources for the protection of such rights. These laws  
184 should also serve as the legal premise for advocating for policy change and harnessing the rights and privileges  
185 under the law for the benefit of the orphans and other vulnerable children.

186 The legal rights of children in Nigeria on the other hand, have been under scrutiny for years due to the  
187 country's record of arbitrary human rights abuse and child maltreatment at various levels. Nigeria recognizes  
188 Civil, Customary and Islamic laws as the basis of its legal system. However, these three forms of law vary in  
189 significant forms and applicability may be subject to territorial and personal submission to the laws. Conflicts  
190 arising from these laws have been settled with the Constitution trumping any other law that operates to contradict  
191 the applicable law within the country. As stated earlier, the repugnancy rule also operates to bring the local laws  
192 and custom into conformity with rules of natural justice, equity and fairness which hopefully will guide against  
193 arbitrary application of such customs and aid the development of workable social policies that will enhance the  
194 lives of all vulnerable children.

195 The protection of the legal rights of children including Children orphaned and made vulnerable by AIDS is  
196 well within the ambit of the law although enough is currently not being done to ensure that children who are in  
197 desperate need of such protection are provided with the necessary resources that is envisaged within the purview  
198 of the law. Formerly, the Children and Young People's Act (CYPA) which was originally passed by the British  
199 Colonial Government in 1943 to regulate juvenile justice was in force which was later revised and incorporated  
200 into Nigeria's federal laws in 1958 (formerly Chapter 32 of the Laws of the Federation of Nigeria and Lagos.) This  
201 law has since been abrogated by the Child Rights Act (2003). The Child Rights Act provides the minimum age  
202 for marriage as 18 years within the country's civil marriage whilst the Sharia Law and most Customary laws allow  
203 for girls younger than 18 to be married. The usual age of marriage under many local laws remain around 14-15  
204 years of age. This is a serious issue in the effort to combat HIV/AIDS in children as many of the children become  
205 entangled in polygamous marriages and exposed to many venereal diseases they have no control over. Although  
206 many religious bodies require a mandatory HIV testing before marriage, mandatory testing for HIV is illegal  
207 under Federal law. The age of consent for testing is 18 years except where the child engages in risky behavior  
208 or is a matured minor who is able to give consent. The Act also provides for the appointment of a guardian ad  
209 litem for the child where necessary. Sections 50-52 of the CRA 2003 provide for the protection of children in need  
210 of care and against physical or moral danger and empowers "a child development or police officer or any other  
211 authorized person to bring a child in need of care and protection before a court for a corrective order, if he has  
212 reasonable grounds for believing that the child is an orphan or is deserted by his relatives, neglected, illtreated  
213 or battered by his parent or guardian or custodian, or found destitute, wandering, homeless or surviving parent  
214 undergoing imprisonment, mentally disordered, or otherwise severally handicapped; or found begging for alms,  
215 or in company of a reputed/or common thief or prostitute, or otherwise beyond parental control or exposed to  
216 moral or physical danger."

217 Notably, the various international and regional laws ratified by Nigeria and otherwise applicable subject to  
218 domestication and the Constitution of Nigeria affords many of the rights outlined in the early part of this chapter  
219 which includes the right to life, dignity and personal liberty, right to the highest attainable standard of health.  
220 Listed below are some of the laws protecting the rights of children in Nigeria:

221 ? The Child's Rights Act (CRA) 2003; Hopefully, the law can and should be used to monitor and develop  
222 tools and social policies designed appropriately to help children access and enjoy all the legal protections available  
223 to them. Governmental policies geared towards education including 'train-thetrainer' schemes should also be  
224 revamped or instituted where such are lacking.

225 One major challenge for children is the lack of legal advocacy and representation of children in courts of law.  
226 The lack of representation cannot be totally blamed on the total lack of laws or policies to protect the children but  
227 is reflective of the cultures of the people that often do not recognize children as individual rights bearers. Ensuring  
228 that the orphans and children affected by HIV/AIDS are identified and protected is key to the development of  
229 the law in the field of health and disability law within the sub-Sahara African region. Government must ensure  
230 that social, legal and welfare policies reflect the needs of the vulnerable within the society and as a matter of

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231 priority create avenues and agencies responsible for the administration of child welfare within the countries. Bar  
232 Associations must also encourage members to provide some hours of pro bono service within their community to  
233 help develop the law and generally the legal system of the country. This will help bring to the forefront issues  
234 that affect children andVolume XIV Issue V Version I 25 ( C )

235 orphans within the society. Health lawyers will also be able to work with the insurance companies and rural  
236 health care plans to ensure that children and those affected by HIV do not only rely on international agencies  
237 and other governmental agencies for their medication and other medical necessities that they may be able to  
238 attain through other efficient means.

239 Where a child loses either or both of their parents to HIV, the state must ensure that foster care or 'Kafallah'  
240 under the Islamic law or adoption or other forms of placement either with extended family members or guardians  
241 is provided for the children. The means and resources to navigate through successful placement process must be  
242 established by the government in order to ensure the protection of the children. State counsels and private health  
243 law advocates must ensure that any form of disability is provided for and that placement does not endanger the  
244 lives of the children in any way. This is most applicable in South Africa since the country has Children's Court  
245 but a lot is left to be desired of the governments of other countries in Sub-Saharan Africa such s Nigeria that do  
246 not have well established child welfare systems in place. More could still be achieved by the South African courts  
247 especially in the coordination of resources to reach those in the hinterland who may be cut off from certain rights  
248 and benefits due to poverty and other socialcultural barriers preventing them from obtaining the much needed  
249 services.

### 250 3 III.

## 251 4 The Way Forward

252 The issues discussed in this paper depicts the inter-relatedness of the various psycho-social problems faced by  
253 Children orphaned and made vulnerable by AIDS and children generally in sub-Saharan Africa using the three  
254 focus countries as focal points for extrapolating issues and ways to address these issues. It is my opinion that  
255 the law will play a pivotal role in this regard. For children generally, governments must strive to work in  
256 consonance with the International Guidelines put forward to encourage proactive and uniform work towards the  
257 achievement of the goal to combat the HIV disease globally especially the guidelines to promote a rights-based  
258 response to the HIV epidemic such as developing equality legislation to protect the victims of HIV from unfair  
259 discrimination, guidance on law reform to support public health interventions such as introducing laws that  
260 support treatment programs by allowing the importation of drugs; and coordinate a multi-sectoral response to  
261 HIV/AIDS, by establishing an inclusive and participatory National AIDS Council and guidance on creating a  
262 supportive environment for groups vulnerable to HIV or affected by HIV for example, law reform decriminalizing  
263 homosexuality. ??4 Governments in sub-Saharan Africa must use public funds, social policies and legal measures  
264 to back health policies being that the systems are just being developed and the levels of poverty and other social  
265 impediments may not allow individuals to obtain optimal healthcare that may be required to help in reducing  
266 or combating the spread of HIV/AIDS within the communities. The recent speech by the President of South  
267 Africa, Jacob Zuma to the National Council of Provinces in October 2009 is commendable particularly because  
268 of the call to the end of denialism and his optimism to cut the rate of new infection by half and for about 80%  
269 access to antiretroviral therapy by 2011. ??5 This level of motivation must be followed by positive actions and  
270 heavy investments by governments to prevent transmission of the disease especially prevention of mother-to-  
271 child transmission, which is a major source of infection in children. Using successful government-backed health  
272 care systems as the Canadian system as a guide, the criteria for such public administration of healthcare must  
273 be based on public administration, comprehensiveness, universality, portability and accessibility. ??6 There  
274 must be centralized monitoring system and enforcement of laws currently in place with the possibility of future  
275 development in all spheres of the society necessary for disease prevention useful for the control of future outbreaks  
276 of disease and infections. The different health insurance schemes must be organized in such a way as to allow for  
277 free health insurance for children and affordable healthcare premiums for adult family members considering the  
278 economical and demographic factors that operate within the African communities. This will be a departure from  
279 the free market economy model due to the sharp inequalities in the economic and social status of the people. A  
280 system similar to one described as "subsidized entrepreneurial model". Describing the Canadian health model,  
281 G.R. Weller explained that health insurance schemes "essentially subsidized the already existing health delivery  
282 system, and although health resources were still viewed as primarily a consumption good, they were seen to be  
283 so inequitably distributed that some public policy was needed to bring about greater equity". 17

284 the administration and delivery of healthcare services are evidently inherent. The author suggests the following  
285 measures to be taken as part of the general efforts to overhaul the mental health systems in sub-Saharan Africa  
286 for the benefit of children and families needing mental health care within the region:

287 IV.

## 288 5 Social Policy Regulation And Legislation

289 Social policy regulation and legislation will help to combat social problems associated with HIV/AIDS in children  
290 and orphans. A clear and strong commitment and concerted effort by governments of the sub-saharan countries

291 geared towards poverty eradication, public education, social security and pension administration, health status  
292 monitoring and the promotion of primary health strategies at the local levels through social programs directed  
293 particularly at rural populations and those directly at risk of infection among other things will work to promote  
294 the general health of the people.

295 Additionally, the continued support of the WHO in furthering the health systems of the focus countries through  
296 the Health Sector Strategic Plans ( I & II) developed for the three countries will strengthen the health systems  
297 and help deliver "interventions that are cost-effective and sustainable" to all citizens. 18 V.

### 298 **6 Registration of Births/Marriage/Relationship Counseling**

299 Overall, countries must seek to establish mental health legislations that will integrate mental health policies that  
300 include family support networks, coalition of social support groups and programs that encourage rehabilitation  
301 services to be provided for the children (especially where parents are either not able to physically provide care  
302 for the children for a reason or the other including but not limited to poverty, illness or death) or when parents  
303 are just not available to care for their children and other human rights issues that will enhance the welfare and  
304 rights of the children.

305 Countries in sub-Saharan Africa must gear up on efforts to ensure the registration of all births within their  
306 region as this will enhance the accurate collection and collation of data necessary to plan for public services and  
307 infrastructures and maximize resources available for the control and treatment of HIV and many of the endemic  
308 diseases within the sub-region. Additionally, it will promote the legal protection of each and every identifiable  
309 child born to families dealing with the disease and encourage the provision of services to any child affected by  
310 HIV whether the parents are available or not. This will be within the purview of S. 7 (1) of the Convention  
311 on the Rights of the Child and the different laws of the countries providing for rights of the child. Relationship  
312 counseling is another vital issue. For orphaned children, loss of parents and other social support systems may  
313 result in mental illnesses as explained earlier. ??9 VI.

### 314 **7 Access To Quality Education**

315 Child trafficking laws must be enforced so as to protect children from child traffickers who prey on orphans who  
316 may not have been affected by the disease initially but lost their parents to HIV/AIDS. With the high incidence  
317 of poverty, children may resort to prostitution and other sex work to sustain their daily needs thereby exposing  
318 them to more harm and other contagious diseases including HIV/AIDS. Protecting the identity of each child  
319 right from birth through birth registration with the adequate keeping of records will ensure that each infected  
320 child is treated as individual rights bearer and protected by law. In order to achieve this, the government must  
321 also provide social amenities and resources that will improve access to healthcare at the rural level within the  
322 primary healthcare services provided by the governments of the focus countries.

323 Education is a major tool that will help to overcome HIV/AIDS prevalence and transmission in Africa. Many  
324 are still unsure as to the modes of transmission of the disease thereby circumventing the prevention efforts that  
325 aim to reduce the spread of HIV/AIDS within sub Saharan Africa. Funding public education and public awareness  
326 programs that reach both city/urban dwellers and the rural communities will work as a vehicle to address the  
327 behavioral aspect of the disease.

328 Training of social workers and other professionals within the social welfare and healthcare system adminis-  
329 tration will be an important aspect of the improvement of the welfare of orphans and vulnerable children. The  
330 effectiveness of most of the primary healthcare systems will only be relevant or significantly felt within the system  
331 if the personnel required and the necessary tools and equipments are available to people across the board such  
332 as that encompassing both rural and urban dwellers who suffer from the disease.

333 Sex education must be included in the school curriculum as a required subject from the primary to the  
334 university level. Emphasis should be placed on prevention strategies that not only seek to curtail the spread of  
335 the infection through the traditional methods of transmission such as sex, blood transfusion and mother-to-child  
336 transmission but also to prevent new Also, more lawyers should offer pro-bono services to indigents, orphans and  
337 vulnerable people who are generally not able to access legal and social services due to the peculiar difficulties  
338 faced by the children who are left without social or basic amenities and often robbed of inheritance and property  
339 rights at the death of the adult family member or caregiver. Importantly, parents must be encouraged to prepare  
340 wills and record deeds and other title documents to any property or assets that they may have in order to protect  
341 their children. Government should be made accountable to the people through an audit system that conforms to  
342 professional accounting standards. Transparency and accountability is vital to promote proper management and  
343 avoid wasteful spending resulting from lack of coordination of programs. ??0 A Child Abuse & Neglect Tracking  
344 System is needed to protect vulnerable orphans and children affected by or those infected with HIV/AIDS. In  
345 most parts of sub-Saharan Africa, there is a breakdown of the family/kinship care system partly due to the  
346 spread of HIV/AIDS that have taken the lives of many adults within Governments need to ensure that adequate  
347 funding is diverted to building infrastructures where people can access services more readily. Information must  
348 be managed effectively using modern technology for electronic medical records backed with privacy and anti-trust  
349 laws that provide the basis for legal enforcement of all violations or flagrant abuse of the system. E-health should  
350 be encouraged to make it easier for medical personnel and patients to have easier access to their medical records

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351 when they need to. In the case of orphans, such easy access will enable them to obtain better service and allow  
352 for a coordinated treatment plan when necessary. See <http://www.urc-chs.com/projects/research/research->  
353 [proj.html](http://www.urc-chs.com/projects/research/research-proj.html) Center for Human Services "A five-year project awarded to URC in August 2008 by the Centers for  
354 Disease Control is working to strengthen and expand HIV/AIDS comprehensive care and treatment services in  
355 the State of Enugu in the Federal Republic of Nigeria. The PEPFAR-funded project, renewable on an annual  
356 basis, is providing services in HIV Counseling and Testing (HCT), Prevention of Mother-to-Child Transmission  
357 (PMTCT), Antiretroviral Therapy (ART) for Adults and Children, laboratory infrastructure strengthening,  
358 TB/HIV integration, Basic Care and Support to people living with or affected by HIV/AIDS and Orphans and  
359 Vulnerable Children (OVC)" families who would have taken care of the younger children. Governments need  
360 to step up and provide support systems such as foster care, adoption, guardianship or the support of extended  
361 family structures to absorb the children left behind by HIV/AIDS within the African communities. Surveillance,  
362 screening and testing of HIV/AIDS in infants/children and the parents will help to determine the spate of the  
363 disease and the accurate control measures to be put in place by the governments. Prevention of Mother-to-  
364 Child Transmission has worked effectively to control HIV/AIDS in most developing countries and will work in  
365 subsaharan Africa if such surveillance systems are adequately monitored. The paramount legal issue here is the  
366 protection of the privacy of the individuals whose health records have been compiled. Here, local privacy rules  
367 should be reviewed and made specific to healthcare especially for the protection of orphans and other vulnerable  
368 children who may need social workers or guardians to act on their behalf. Confidentiality of such information  
369 obtained and kept will also be essential to the future success of healthcare delivery and administration. For  
370 children, ethics committees must be created to develop child-centric rules that will ensure the protection of the  
371 children and support the delivery of healthcare services to them more easily and responsibly.

372 A child welfare system backed with legislations, legal policies and enforcement procedures that are carefully  
373 managed and included in the National Plans of Action will ensure that children are supported and provided with  
374 adequate healthcare services within the countries and also work to adequately and properly steer the countries  
375 into the achievement of the MDGs and other local and regional laws, treaties and covenants that are in place  
376 to regulate the sphere of child protection. In Nigeria and Uganda for example, there is a need to establish  
377 family courts separate from the general civil court system whereby the family courts function with concurrent  
378 civil jurisdictions with the state high courts in the administration of family issues, exercise jurisdiction over  
379 juvenile delinquency, dependency, child neglect, child abuse, child and spouse support, adult misdemeanor crimes  
380 against juveniles, paternity of children, custody and visitation of children, adoptions, terminations of parental  
381 rights, divorces and annulments, specific enforcement of separation agreements, imperiling the family relationship,  
382 property divisions, guardianship over minors, orders of protection from abuse and intra-family misdemeanor  
383 crimes. Although South Africa has a family court system, this system is not without its own faults and will need  
384 to be generally overhauled.

385 Public-Private Partnerships (PPP) and other collaborations with local, regional and international bodies are  
386 useful tools to achieve universal access to care. An important group within this strategy will be Volume XIV  
387 Issue V Version I women's groups especially those within child-bearing age. Also, professional bodies from legal,  
388 medical, social and educational fields will be able to contribute on a multi-disciplinary basis to the development  
389 of child-centric policies that will promote the health of orphans and vulnerable children infected or affected by  
390 HIV/AIDS through the formulation of ethical rules that set the standard for the inclusion and treatment of  
391 children.

392 Although these rules cannot be legally enforced, ethical and professional principles often ensures the equitable  
393 treatment and management of health issues in children.

394 VIII.

## 395 8 Fraud Prevention Strategies

396 Fraud is a major problem in many parts of Africa. Many African nations have lost major parts of their resource  
397 to fraud perpetrated across the different levels of government resulting in loss of economic opportunities within  
398 the continent. Governments of subsaharan African countries must endeavor to develop strategies that will help  
399 alleviate, if not eliminate the wide-spread fraud within the health care system as an important government  
400 strategy/priority. As part of the fraud prevention strategy in sub-saharan Africa, the governments of the countries  
401 within the region must make and enforce specific laws that prohibit stigmatization, discrimination and unfair or  
402 differential treatment of the vulnerable children by healthcare workers.

403 IX.

## 404 9 Reform

405 The law has always taken the back seat in the provision of basic amenities and protection of human rights  
406 (including the right to health care) in most African countries. The absence or inadequacy of legislation needed to  
407 protect children often result in social and political ills within many African nations. Legal reform could possibly  
408 take the form of an actual introduction of laws into the legislature and the actual setting of regulatory framework,  
409 policies and systems that will enhance and ensure the protection of the vulnerable group consisting of women  
410 and children and ultimately benefit the entire community as a whole. Legal reform should engage public/private

411 partnership and an active commitment to international treaties and regulations that have been ratified by the  
412 governments of the focus countries. The legal profession through its professional associations must strive to work  
413 with the government in order to form medical-legal partnerships that not only participate, advise, supervise and  
414 provide technical support for the law making mechanisms of the state but also responsibly contribute actively  
415 legal services that may be needed especially by the children and their families. Government must strive to  
416 institute and fund regulatory bodies that will coordinate the affairs of the health service providers, insurance and  
417 other health professional groups to ensure consumer protection.

418 Also, there is an urgent need for a complete overhaul of the child welfare system of the three focus countries.  
419 Juvenile Justice System, state and national child protection agencies needs to be established and where they are  
420 in existence such as in South Africa, they need to be overhauled to ensue that services reach the children across  
421 the board. Many times, orphans and children often become victims of their circumstances and get thrown in adult  
422 jails where they are maltreated and sometimes abused. The author will advocate for medical-legal partnership  
423 for children advocating for government-funded, state run healthcare for children from birth to adulthood (about  
424 18 years) where lawyers may provide pro bono services for all children and families in need of such through  
425 government appointed social and legal agencies under the active monitoring and guidance of the appropriate  
426 professional and regulatory bodies. Additionally, healthcare professionals and lawyers need to work together  
427 with the government to coordinate and support many of the rural and community healthcare programs that are  
428 currently run in a highly decentralized fashion.

429 The author suggests a community-based psychosocial model channeled through the Primary Health Care  
430 System encompassing the following: The above suggested model advocates a centralized system of care targeted  
431 at children especially those orphaned by HIV/AIDS and/or those affected or infected by the disease. The  
432 case can be made for a centralized system of care since it facilitates an all-inclusive system that targets the  
433 specific group of children and helps focus limited resources and funding on the group that is most in need of  
434 such services. A community-based model that is culturally sensitive, trajected through primary health care  
435 delivery system centralized under Local Health Authority Boards for the purpose of aiding easy access to care  
436 and treatment, efficiency in disease management, improved use of information technology for data collection  
437 and a fairer or equitable resource allocation within each health care system. This is more so important in  
438 tackling the challenges posed by the various mental health issues presented by children infected or affected in any  
439 way by HIV/AIDS. Thus, "providing assessment, early intervention and continued monitoring at the primary  
440 care level, with a coordinated management plan including primary care clinicians, mental health professionals,  
441 school personnel, and others involved in the care of the child, offers the unique opportunity to engage families  
442 and maintain young people in treatment without stigma". ??1 Major barriers to health development in SSA  
443 such as funding and availability of trained professionals must be tackled by the governments. There must be a  
444 commitment to develop and provide modern infrastructures needed for the training of those professionals and  
445 provide equipments and resources Nutritional programs that are targeted at young children especially those in  
446 the rural areas must be given urgent priority. Many of the UN projects have already infused money into Africa  
447 through their various projects. Governments must better coordinate the activities of agencies and participating  
448 agencies working in the countries in order to ensure that the efforts at alleviating hunger and poverty embarked  
449 upon by these agencies are managed efficiently and reach those needing such services across the communities.  
450 Utilizing educational interventions have the capability of diffusing some of the fears, anxieties and ignorance  
451 surrounding mental illness within the different African cultures and other HIV/AIDS related social problems  
452 such as stigma, depression, sadness resulting from loss, bereavement and economic loss. Care at the primary level  
453 should integrate professionals in the various fields of healthcare, social service, legal, education and community  
454 support system that must contribute to the different healthcare needs of children in order to achieve optimal care  
455 level.

456 for trained professionals within the various pediatric units that cater to the needs of children in need. This will  
457 provide an enabling environment for the professionals to be encouraged to continue to practice within the region.  
458 Financial barriers to development must be primarily tackled through a centralized control system that manages  
459 and allocates resources through the primary healthcare system reaching those as far away as the remote villages  
460 within the regions. In Uganda, the mental health system for example is effectively worked out in such a way that  
461 almost every patient has some access to basic medication. This structure can be worked out in other parts of SSA,  
462 for example, in Nigeria, each ministry is required to commit at least 1% of their budget to HIV/AIDS funding.  
463 A good size of this contribution should be used to promote the efforts at HIV/AIDS prevention, treatment  
464 and management issues. A reasonable amount of government resources should ideally be diversified into the  
465 provision of adequate health care services for children being SSA is a predominantly youthful population. In  
466 this light, the mental health needs of orphans should be emphasized and incorporated into National Plans of  
467 Action. This should result in adequate National, State/Provincial and Local level health policies being developed  
468 for the psychosocial development of orphans and children generally. Funding received from international, local  
469 and private partners should be centrally administered in order to avoid waste and combat fraud that is mostly  
470 perpetrated in a loose system that is bereft of adequate records and legal enforcement.

471 The role of law is quite paramount. Many of the archaic laws within the region must be updated and adequate  
472 sentencing of offenders provided. Legal professionals must be encouraged at the national Bar Council level and  
473 at local areas to engage in some amount of pro-bono services for children. Effective Legal Aid Clinics must be

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474 developed to tackle the problems faced by children and their families and those that are vulnerable within the  
475 society. Medical-Legal Partnerships must be established and must be donor-funded, government supported via  
476 promulgation of adequate laws that seek to protect children effectively within the bounds of the law with targeted  
477 training of officers on child-friendly procedures and guidelines for child protection. Public/Private Partnerships  
478 must be encouraged as a major source of funding and community development. Health Insurance Schemes must  
479 operate within the confines of the law and must include public funded basic health care services for children as  
480 a matter of priority in order to ensure a healthy population in the nearest future that will be healthy enough  
481 to contribute positively to overall development of any nation. To this end, each of the countries in SSA must  
initiate and implement National <sup>1 2 3</sup>



Figure 1: 19

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<sup>1</sup>See Aids & Rights Alliance of South Africa (ARASA), (2009) "HIV/AIDS & Human Rights in South Africa" published at: [http://www.safaid.net/files/ARASA\\_Human\\_rights\\_report\\_2009.pdf](http://www.safaid.net/files/ARASA_Human_rights_report_2009.pdf)

<sup>2</sup>See [http://www.who.int/healthmetrics/library/countries/hmn\\_uga\\_his\\_2007\\_en.pdf](http://www.who.int/healthmetrics/library/countries/hmn_uga_his_2007_en.pdf)

<sup>3</sup>V. Eapen, Et Al., "Integration Of Child Mental Health Services To Primary Care: Challenges And Opportunities" Ment. Health Fam. Med. 2009 March; 6(1): 43-48

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 0CA4Q6AEwAA#v=onepage&q=&f=false

3 See N. Asingwire, and S. Kyomuhendo, "Development of a National  
 Overarching HIV/AIDS Policy for Uganda: A review of the HIV/AIDS  
 Policy Environment" (2003) ONLINE at [http://www.aidsuganda.org/pdf/  
 Review\\_of\\_AIDS\\_policy\\_environment.pdf](http://www.aidsuganda.org/pdf/Review_of_AIDS_policy_environment.pdf)

4 "id"

*[Note: 5 Uganda: National Strategic Plan for HIV/AIDS, (2011-/12 -2014/15) Published January 2012.  
 Online at [http://hivhealthclearinghouse.unesco.org/sites/default/files/resources/uganda\\_national\\_strategic\\_pl  
 an\\_for\\_hiv\\_aids\\_2011\\_2015.pdf](http://hivhealthclearinghouse.unesco.org/sites/default/files/resources/uganda_national_strategic_pl<br/>
  an_for_hiv_aids_2011_2015.pdf) Last visited July 14, 2014. 6 See Tumwesigye et al. (2013) Policy development,  
 implementation and evaluation by the AIDS control program in Uganda: a review of the processes Online version  
 at <http://www.health-policy-systems.com/content/11/1/7>]*

Figure 2:

- ? Trafficking in Persons (Prohibition) Law Enforcement  
 and Administration Act 2003;
- ? Ebonyi State Law No. 010 (2001) on the Abolition of  
 Harmful Traditional Practices Against Children and  
 Women;
- ? Edo State Female Genital Mutilation (Prohibition)  
 Law 2002;
- ? Edo State Criminal Code Amendment Law 2000;
- ? Bauchi State Hawking by Children (Prohibition) Edict  
 of 1985 CAP 58;
- ? Cross River State Girl Child Marriages and Female  
 Circumcision (Prohibition) Law 2000;
- ?

Figure 3:

Support Needs Health Support Legislation	Medical Physical / Legal /	Centralized Primary Care/Community-Based Support	Health Care/Community-Models M	Nutritional Programs that Families Counseling/Social Psychosocial Support Child	Year 2014 29 Volume XIV Issue V Version I ( C ) Global Journal of Human Social Sci- ence
Educational Support		Financial Support/Resource Allocation			

[Note: © 2014 Global Journals Inc. (US) -Figure 7 : PHC /Community Based Psychosocial Health Service Model]

Figure 4:



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483 Child and Adolescent Mental Health Policy such as is the case in South Africa. ¶¶ 1. Constitution of South  
484 Africa 1996 S. 12 The goal of improving public health in Sub-Sahara Africa is one that should be accorded a  
485 high priority. Protecting the psychosocial health of orphans and children made vulnerable by HIV in can only be  
486 achieved by employing all the tools and resources made available through various sources effectively. Governments  
487 in sub-Saharan Africa must commit to financing mental health services within the existing healthcare structure.  
488 The necessity for developing and implementing policy statements and guidelines and a governmental commitment  
489 to the future growth and development will help to infuse the much needed energy and direction into community  
490 development and the improvement of the health of the people. Hopefully, this will be an achievable goal for  
491 Africa in the nearest foreseeable future.

492 2. "id" S. 14 3. "id" S. 14 (d) 4. See *Hoffman v. South African Airways* 2001 (1) SA 842 (A) (S. Afr.) Here,  
493 the court held that the airline company must afford reasonable accommodations to their HIV-positive employees,  
494 in this case, an HIVpositive employees was not able to obtain the mandatory yellow fever vaccination because of  
495 possible complications with the immune system of the HIV positive employee 5. See *United States v. Guest*, 383  
496 US 745, 762 (1966) where the court stated that equal protection "speaks to the state or to those acting under  
497 the color of its authority". See also the civil remedies for violations of constitutional rights under 'the color of  
498 law' provided under 42 U.